THE CORPORATION JOURNAL

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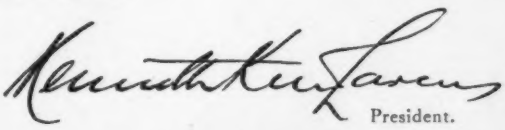
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

What Constitutes Doing Business

There have been published in The Corporation Journal since the first issue in 1908 digests of many decisions of State and Federal courts on what does or what does not constitute "doing business" on the part of a corporation in states other than that in which organized. There are involved such questions as the right to prosecute and defend actions in the state courts; the necessity to qualify to avoid specific and indirect penalties; the validity of attempted service of process on the corporation; the "doing business" privilege taxes. Some years ago such of these digests as had then appeared in The Journal were assembled by us under state groupings in a pamphlet entitled "What Constitutes Doing Business." This was received with much favor by members of the bar. From time to time revised editions, complete to date of issue, have been published. The most recent revision, as of July 1, 1928, containing a comprehensive topical index and carrying all digests of pertinent decisions appearing in the 166 Numbers of The Journal is about ready for distribution. A request for a copy made at any one of our offices will gladly be honored as soon as the revised pamphlet is off the press.

The Corporation Journal, will, as usual, suspend publication for August and September. The next number will be that for October, 1928.



President.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

VOL. VIII, No. 166 JULY, 1928 PAGES 217-240

The Corporation Journal is published by The Corporation Trust Company monthly, except in August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter before mailing, each copy will be punched to fit the binder.

Contents for July

Foreign Corporations in Latin America

(Continued from the April, May, and June numbers and here concluded.)

Haiti.

No distinction appears to be made between foreign corporations and foreign individuals doing business in Haiti. A license tax is collected from all. The application for license is directed to the Minister of Finance. It must indicate the name of the applicant; his nationality; residence; the nature of his business; the number and location of his establishments—accompanied by a receipt for the payment of the license at the national bank.

Honduras.

Foreign stock companies may not have agents in Honduras without express authorization of the Executive. Agents who operate for these companies without having secured the Government authorization will be personally responsible for the fulfillment of the contracts they may enter into, and will be subject to all the responsibilities previously established, without prejudice to any action that may lie against the companies.

Mexico.

Companies legally formed abroad and established in Mexico or having an agency or branch therein must subject themselves to:

(a) Inscription and registry, consisting of proof of legal record of their by-laws, articles of incorporation, and other documents relative to their constitution, and inventory or last balance sheet.

(b) Certificate to the effect that the company is organized and authorized in accordance with the laws of the country of organization, certified by the Minister accredited by Mexico to that country, or in case there is none such, by the Mexican Consul.

(c) The annual publication, when the capital is by shares, of a balance sheet giving the assets and liabilities with due clearness, as well as the names of the persons in charge of the administration and direction.

Failure to comply renders those who contract in the name of the company personally and collectively responsible for all obligations contracted by the company.

Nicaragua

Companies legally organized abroad and established in Nicaragua or having branches or agencies therein must comply with the following formalities:

(a) Inscription of the articles of agreement in the commercial registry; similar inscription of their by-laws, appointments of managers or agents and inscription already made of these agreements and documents in the commercial court at the domicile of the companies.

(b) Annual publication in the Dario Oficial of the balance sheet showing the assets and liabilities and the names of directors and administrators.

(c) Maintain in the country a representative with general powers of attorney inscribed in the register.

The judge will not have the articles of agreement and by-laws inscribed in the mercantile register if the founders of the company are not persons of good reputation, natives of the country, or foreigners domiciled therein.

Non-compliance makes personally and collectively liable all persons contracting in the name of the company.

Paraguay.

By legislative decree, the legal regulations regarding corporations in Paraguay are the same as those established by the Commercial Code of the Argentine, for extracts of which see the April number of The Corporation Journal.

Panama.

A foreign corporation may maintain offices or agencies or carry on business in Panama provided it files in the Mercantile Registry the following documents for recording:

(a) Deed of protocolization of its articles of incorporation;

(b) Copy of its last balance sheet accompanied by a declaration of the amount of its capital engaged or to be engaged in business in Panama.

(c) A certificate setting forth that it is incorporated and organized under the laws of the country of its domicile certified to by a consular representative of Panama in said country or if there be no such representative then by that of a friendly nation.

A non-complying corporation may not sue in any court in Panama, but may be sued therein. It is also liable to a fine of not exceeding five thousand Balboas to be imposed by the Secretary of the Treasury.

Every commercial establishment is required to keep its books in Spanish or in English. Correspondence may be kept in any language, but whenever it is necessary to make official use of books or correspondence in a language other than Spanish, the cost of translation must be paid by the owner of the establishment.

Peru.

Foreign companies desiring to locate or to establish branches in Peru must present and have noted in the Mercantile Registry, in addition to the by-laws and other documents which Peruvians must present, a certificate by the Peruvian Consul showing that they are organized and duly authorized in accordance with the laws of the country of origin.

Uruguay

Foreign companies with an establishment in Uruguay before commencing business must comply with the formality of registering in the place where they are domiciled. Stock corporations may be established only upon authorization of the Executive of Uruguay; the General Assembly determines the privileges which they may enjoy.

Venezuela.

Foreign companies organized chiefly for the purpose of engaging in business in Venezuela will be considered as Venezuelan companies. Foreign companies that have branches only, or business which is merely incidental to that for which they were organized, may keep their nationality but will be considered as domiciled in Venezuela. All must register in the Commercial Register in the place where the agency or business is located, and must publish in the press the articles of agreement and the documents necessary for the organization of the company in accordance with their respective national laws, as well as an authenticated copy of the provisions of such laws. Their by-laws will be filed likewise in the Commercial Register.

Such companies must appoint a representative in Venezuela, who will have full powers excepting that of disposing of the undertaking or concession, if this authority has not been expressly granted.

Persons making contracts in Venezuela in the name of companies formed abroad and not registered are personally and collectively liable for all obligations contracted within the limits of the nation, without prejudice to any action at law by interested parties which may lie against the company.

Domestic Corporations

Illinois.

Conditional sales contract entered into for performance in another state. This is an action in replevin. An Illinois corporation entered into a conditional sales contract with a resident of Connecticut under the terms of which a Ferris wheel, after a down payment was made on signing of the contract, was shipped to Connecticut the balance of the purchase price to be paid in monthly installments. Title was reserved in the seller until full payment had been made. The Connecticut law provides for the recording of such contracts covering conditional sales of personal property with certain exceptions (furniture, musical instruments, and bicycles) in the town clerk's office in the town where the vendee lives in the absence of which recording the sale is considered as an absolute sale except as between the vendor and vendee. The contract here was not recorded. There was default in payment. The vendee sold the wheel to Oregon parties to whom it was shipped. Plaintiff then brought this action in replevin against the Oregon vendees. The latter had no knowledge, actual or constructive, of the plaintiff's interest in the wheel. The Supreme Court of Oregon affirms the judgment below for defendants, holding that while the formal execution of the contract was in Illinois its performance was in Connecticut and that the pertinent law of Connecticut is applicable and that the validity of such sales is determined by the situs of the property and not the lex loci contractus. Eli Bridge Co. v. Lachman et al., 265 Pac. 435. L. A. Liljeqvist, of Portland (Cake, Cake & Liljeqvist, of Portland, on the brief), for appellant. MacCormack Snow, of Portland (William A. Carter and Franklin F. Koroll, both of Portland, on the brief), for respondents.

Massachusetts.

Stockholder who is a creditor also may sue as a creditor. A corporation may buy its own stock. After quoting from and differentiating Potter & Stevens Machine Co., 127 Mass. 592, 34 Am. Rep. 428, and Thatcher vs. King, 156 Mass. 490, 31 N. E. 648, the Supreme Judicial Court of Massachusetts (Suffolk), says: "In our opinion a stockholder who is also a creditor of the corporation may employ the remedy given to creditors against the officers and directors of the corporation. [Gen. Laws Chap. 156, §§36-38.] The language of the statute and the reason for its enactment apply to all creditors alike; and a stockholder who is also a creditor should not be deprived of the benefits given." The court reiterates that "it is settled in this commonwealth that a corporation, unless forbidden by statute, may purchase its own stock, and

an agreement to do this is enforceable. * * * A purchase by a corporation of its shares of stock does not necessarily amount to a reduction of its capital stock, 'for the stock was kept in existence, ready to be sold and transferred to another party.' Leonard vs. Drapes, 187 Mass. 536, 538, 73 N. E. 644." Dustin vs. Randall Faichney Corporation, et al., 160 N. E. 528. T. W. Morris and S. L. Solomont, both of Boston, for defendants. D. Burstein, of Boston, and Buff, Everts & Ladd, for plaintiff.

Michigan.

If a corporation organized under laws other than those of Michigan owns no property outside of Michigan its shares of stock owned by residents of Michigan are exempt from personal property tax. The Attorney-General of Michigan so holds in a letter addressed to Supervisor Gardner of Tryon Township under date of February 28, 1928. The opinion was given in answer to the question whether or not the right existed to assess for purposes of taxation certain shares of stock in a Maine corporation owned by residents of the Michigan township, all of the corporation's property being situated in Michigan and so subject to tax there.

Minnesota.

Assessment on stockholders; notice; exceeding of charter debt limitation. Appeal from an order of assessment on stockholders of a corporation in the hands of a receiver, based on their constitutional liability. Stockholders of a Minnesota corporation are personally liable up to the par value of their stock for the full amount of the existing corporate indebtedness, unless it exceeds the limitation fixed in the corporate charter, beyond which limitation they are not liable. One stockholder was not properly served with notice of the assessment. The Supreme Court of Minnesota in answer to the contention that the trial court lacked jurisdiction of the cause because of this defect says that the notice was duly served on the appellants; they are not in position to object to the jurisdiction; the court had jurisdiction of the corporation; that was sufficient. The corporation exceeded its debt limit; it applied its assets in partial liquidation; the outstanding remaining indebtedness is within the charter limitation. "The remaining indebtedness is what is to be considered in deciding the propriety and amount of an assessment." The contracts creating the indebtedness in excess of the limitation, though ultra vires were not void; the corporation could not plead ultra vires as a defense; "it is only under unusual circumstances that its stockholders should be permitted to do so and thereby avoid their constitutional liability"; no such circumstances are here found. Kuhlman et al. v. Granite City Investing Corporation; Atwood et al. v. Schneider 218 N. W. 885. J. Arthur Bensen, of St. Cloud, and Morphy, Bradford, Cummins, Cummins & Lipschultz, of St. Paul, for appellants. Orr, Stark & Kidder and Oppenheimer, Dickson, Hodgson, Brown & Donnelly, all of St. Paul, for respondents.

In Barnes v. Campbell et al., 218 N. W. 887, a proceeding to enforce the constitutional superadded liability of stockholders of a Minnesota corporation, the Supreme Court of Minnesota says: "All else aside, the assessment will not produce anywhere near the charter limit of indebtedness. So, even though the remaining debt of the corporation still exceeded the charter maximum, the stockholders could not complain." And, quoting from the comment of the trial judge: "It is only when the indebtedness exceeds the charter limit, but is less than can be realized from an assessment, that the debt limit becomes material." In this action Eriksson & Zumwinkle, of Fergus Falls, appeared for appellants, and Anton Thompson, of Fergus Falls, for the respondent receiver.

Mississippi.

No par value stock authorized. By its new corporation law, effective April 13, 1928, Mississippi corporations may have stock without par value, both common and preferred, more than one series of the same class of stock being authorized.

Missouri.

Forming Delaware corporation to avoid inhibition to Missouri corporation to issue preferred stock in absence of unanimous consent of stockholders. Action by stockholders of a Missouri corporation dissenting to plan of reorganization for receivership and other equitable relief on the ground that the sale and transfer of the company's assets to a Delaware corporation organized to take them over was ultra vires and void because a "palpable evasion and circumvention of article 12, section 10, of the Missouri Constitution" which provides that "no corporation shall issue preferred stock without the consent of all the stockholders." The Supreme Court of Missouri affirms the decree below dismissing plaintiff's bill and dissolving a temporary restraining order equitable relief being denied because of laches, adequate remedy at law and because of intervening rights of innocent strangers. On overruling a motion for rehearing the court says that the constitutional provision referred to has no application to a foreign corporation; that the Delaware corporation was properly organized under the laws of that state, presumably; that the organizers could have organized the corporation with the same capitalization, etc., and for the same purposes under the laws of Missouri had they seen fit so to do; that its capitalization is in entire harmony with the laws of Missouri respecting the capitalization of domestic corporations; and that the organization and incorporation of the Delaware corporation cannot be deemed to have been had for the purpose of avoiding or evading the laws of Missouri and so a void act under §9792, Rev. Stats. 1919, under which the "pretended incorporators would be held as partners." Newell et al. v. Wagner Electric Mfg. Co. et al., 4 S. W. (2d) 1072. Leahy, Saunders & Walther, of St. Louis, and John T. Barker, of La Plata, for appellants. Lewis & Rice and Rassieur & Goodwin, all of St. Louis, for respondents. Abbott, Fauntleroy, Cullen & Edwards, of St. Louis, for intervener Greer.

New Jersey.

Court of Chancery has jurisdiction to consider the appointment and continuance of a receiver of a foreign corporation. The Court of Chancery of New Jersey after citing and quoting from Burnrite Coal Briquette Co. vs. Riggs, 274 U. S. 208 (November, 1927, Journal, p. 32) and other cases says: "The inherent jurisdiction of the Court of Chancery is as broad as that of a United States court sitting in equity, because each derives that jurisdiction from the same source—the common law of England. The theory of the cases I have quoted * * * is that in a case similar to the one now under discussion the question is not one of jurisdiction; it is rather whether the court can, should it assume jurisdiction, make its decree effective. In other words, not whether it has jurisdiction, but should it in its discretion exercise the inherent jurisdiction which it possesses. Here we have a foreign corporation whose business and assets are in New Jersey and all the directors of which are before the court [either as complainants or defendants]. It seems to me that this court has jurisdiction under its inherent equity powers to consider the appointment and continuance of a receiver." Then, after consideration of the facts the court makes "the appointment of the receiver permanent according to the prayer of the bill." Hill et al. vs. Dealers Credit Corporation et al., 140 A. 569. Merritt Lane, of Newark, for complainants. McCarter & English, of Newark, for defendants.

New York.

Transfer of decedent's stock in a corporation to which he died indebted. The New York Supreme Court, Appellate Division, Second Department, after stating that Section 66 of the Stock Corporation Law providing that directors of a corporation may refuse to consent to the transfer of stock until the stockholder's indebtedness to the company is paid, if a copy of the law is printed on the certificate, does not create a lien on the shareholder's stock in favor of the corporation, holds that the transfer mentioned in the statute is a transfer in fact and not one created by operation of law, as in case of death, and that on the death of the stockholder, his personal representative "becomes the owner of the stock and entitled to dividends, and to have such ownership noted on the books of the corporation. In a case such as this, the indebtedness is paid when the personal representative of the deceased turns over to the corporation its pro rata share of the net assets of the estate and a transferee of the personal representative would be entitled to have such transfer recorded on the corporation's books." In re Starbuck, In re Empire Trust Co., 228 N. Y. Sup. 174.

Texas.

Agreement to subscribe to stock in corporation to be formed when certain amount was subscribed is held to be binding and irrevocable. The Commission of Appeals of Texas, Section B, states that there is considerable conflict in the authorities on this question but thinks

"the better view is expressed by the authorities [citing many cases] holding that a subscription agreement by a number of persons to the capital stock of a corporation to be thereafter formed by them constitutes a contract between the subscribers themselves to become stockholders when the corporation is formed on the condition expressed in the agreement, and as such is binding and irrevocable from the date of subscription." It is further said: "When several parties agree to contribute to a common object which they wish to accomplish, the promise of each is a good consideration for the promise of others." Coleman Hotel Co. v. Crawford, 3 S. W. (2d) 1109. Critz & Woodward, of Coleman, for plaintiff in error. Dibrell & Snodgrass and W. Marcus Weatherred, all of Coleman, for defendant in error.

West Virginia.

Voting rights of pledgee of stock.—Scrutinizing transactions between boards of directors having common members. The appellant, here, was a creditor of the named defendant company and held as collateral security for the debt certain of the preferred stock of the company issued to itself, endorsed and delivered to him. He claimed that a called meeting of stockholders was invalid because he was not given notice thereof as a stockholder; that the indorsement and delivery of the certificates to him was equivalent to registering the stock in his name; and he relied on the general rule that he, as transferee, is not to be prejudiced because proper entry was not made on the books, he having done all he could do to procure a transfer, the fault lying entirely in the officers of the corporation. The U. S. Circuit Court of Appeals, Fourth Circuit, holds that he had no right to notice of the meeting and could not have voted the stock had he attended; that he had taken no steps to secure the issuance of the stock in his own name; and that "it does not appear that he desired to have the stock registered in his name, or that he made any effort whatsoever to accomplish it." The statutes of West Virginia (Barnes's Code, C. 53, §§18 and 19) provide that "the person in whose name shares of stock stand on the books of the corporation shall be deemed to be the owner thereof, so far as the corporation is concerned," and that "no vote shall be given on any stock while owned by the corporation."—On another issue the court says: "The rule is that the relation of directors to corporations is of such a fiduciary nature that transactions between boards, having common members, are regarded as jealously by the law as personal dealings between a director and his corporation. Where the fairness of such transactions is challenged, the burden is upon those who would maintain them to show their entire fairness. The Supreme Court has been consistently emphatic in the application of the rule, and has declared it to be founded upon the soundest morality and the soundest business policy. Geddes vs. Anaconda Mining Co., 254 U. S. 590, 599." It is not essential for present purposes to go into the merits. Finefrock vs. Kenova Mine Car Co., et al., 22 F. (2d) 627. Connor Hall, of Huntington (O. J. Deegan, of Huntington, on the brief), for appellant. Cary N. Davis, of Huntington (Fitzpatrick, Brown & Davis, of Huntington, on the brief), for appellees.

Corporation Officials—

How long since you checked with your attorney the list of your company's corporate representatives in those states in which you are doing business?

Is each such representative now present, to your certain knowledge, at the address on file with the Secretary of State?

Is each such representative, to your certain knowledge, equipped with the necessary facilities for keeping informed of all state reports required from your company, dates for filing, dates for paying all property, franchise, income and other taxes in the state due from your corporation, and how to protect you against improper assessments?

Does each such representative keep your attorney promptly informed of all such matters, and all other matters affecting your corporate standing in the state?

If—

the corporate representation of your company is in the hands of The Corporation Trust Company you need have no worry about the answers to any of those questions. You can feel sure that an experienced statutory representative of your company is ALWAYS on duty; that neither vacations, removals, discharges, changes nor deaths will interrupt the continuity of your company's representation; that your company's attorney will be kept promptly informed of any and all matters requiring his attention in order to preserve the corporate standing of your company in the state.

If your company's corporate representation in any state is at present in doubtful hands, ask your attorney today about having it safely placed under the direction of The Corporation Trust Company's continent-wide organization of experts.

Preferred stock preference on dissolution of a West Virginia corporation originally organized as a New Jersey company. In 1892 a New Jersey corporation was organized, two classes of preferred stock as well as common stock being authorized and issued. The preferred stock certificates carried no indication of any priority preference in distribution of capital assets but the New Jersey law at that time provided in case of dissolution for payments to preferred stockholders before any distributions to common stockholders is made. In 1894 a West Virginia corporation was organized to take over all the assets, liabilities, and business of the New Jersey corporation, the stock in the latter company being exchanged for like stock in the new company it being stipulated by resolution of the stockholders of the New Jersey corporation "that the preferred stock [is] to be issued under the same conditions as now exist as to the said stock of the present company"; the terms of the exchange were accepted by the stockholders of the West Virginia corporation, the situation in regard to the preferred stock being recognized by appropriate resolution. The West Virginia code provides that the stockholders of a company may authorize the issuing of preferred stock on such terms and conditions respecting preference as they may deem proper. Neither the certificate of incorporation of the West Virginia corporation nor the preferred stock certificates themselves state any right of preference attaching to the preferred stock as to distributions of capital assets. The United States Circuit Court of Appeals for the Fourth Circuit affirms the decree of the District Court holding that on dissolution of the West Virginia company the preferred stockholders should have preference (leaving nothing for the common stockholders) as if the dissolution were that of the original New Jersey corporation. Putnam vs. Slayback et al., 23 F. (2d) 406. Henry King Siebeneck, of Pittsburgh, Pa. (J. D. Bell, of Pittsburgh, on the brief), for appellant. Thomas B. Jackson, of Charleston, W. Va., and Arthur B. Van Buskirk and H. V. Blaxter, both of Pittsburgh, Pa. (Lon H. Kelly, of Charleston, W. Va., Blaxter & O'Neil and Alexander C. Tener, all of Pittsburgh, Pa., Brown, Jackson & Knight, of Charleston, W. Va., and Charles F. Patterson, William M. Robinson, and Reed, Smith, Shaw and McClay, all of Pittsburgh, Pa., on the brief), for appellees.

Foreign Corporations

Arkansas.

Liability of stockholders for the debts of the corporation. Action against stockholders of a bankrupt Delaware corporation, authorized to do business in Arkansas, to enforce their liability on a judgment against the corporation obtained in the Arkansas courts. It was contended that the stockholders were liable for the debt of the corporation because, as was admitted, the corporation had been doing business in Tennessee without authority. The Supreme Court of Arkansas holds that it is immaterial for the purposes of the decision in this case whether or not the corporation was doing business in Tennessee without authority since it is "the settled rule in Arkansas that the stockholders are not

liable for the debts of the corporation," and that "the liability of the stockholders for debts of a corporation will not be enforced in the courts of Arkansas." The court says that it knows of no statute either in Arkansas or in Tennessee making the stockholders liable, and thus making the liability one of contract, though the Tennessee courts have held that if a foreign corporation does business there without having complied with its laws the stockholders are liable for its debts. The court adds that if the Tennessee statutes made the stockholders liable it might hold that the debt was contractual, "but we have no such case here." American Trust Co. vs. Vandertuuk et al., 1 S. W. (2d) 41. Cooley, Adams & Fuhr, of Jonesboro, for appellant. Church & Grannaway, of Memphis, Tenn., and Coleman & Riddick, of Little Rock, for appellees.

Michigan.

Compliance required by Massachusetts or Common-Law Trusts as "foreign corporations." The United States Supreme Court, on June 4, 1928, in Hemphill vs. Orloff, affirms the decision of the Michigan Supreme Court in an action on a note brought by the vice-president of the payee, the Commercial Investment Trust, of Massachusetts, "of the class commonly known as 'Massachusetts Trusts' or 'Common Law Trusts'," sustaining the defense that as the payee was a foreign corporation within the meaning of the Michigan statutes and as it was "doing business" in Michigan without having complied with the pertinent Michigan laws it could not maintain the action. There had been no attempt to qualify. It was contended that the statutes as construed by the Michigan Supreme Court denied to the trustees the equal privileges and immunities guaranteed by Article IV of the Constitution, deprived them of property without due process of law contrary to the Fourteenth Amendment, and restrained interstate commerce. The court finds that the Trust was carrying on the business of dealing in negotiable notes in Michigan and that "such business is not interstate commerce." And says that if an organization is "clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment." "Obviously the Trust here involved is a creature of local law which demands the privilege of carrying on business in Michigan as an association—an entity—clothed with peculiar rights and privileges under a deed of settlement undertaking to exempt all of the associates from personal liability. As in the case of a corporation and for the same general reasons it cannot rely upon rights guaranteed to the individuals." And: "What we have already said shows plainly enough the insubstantial nature of the suggestion that the questioned statutes deprive the Trust, the trustees, or members, of property without due process of law."

New York.

On service of process on the Secretary of State as substituted agent. In 1923 the New York Legislature provided that any foreign corporation thereafter qualified to do business in the state should as a prerequisite

appoint the Secretary of State as agent for the service of process in any action brought against it. Foreign corporations theretofore qualified were authorized to maintain their previously designated agents. In event of the death, resignation, or removal from the state of such appointed agent service in *any* action was to be on the Secretary of State as substitute. In 1927 the same provisions were reenacted. For the period Section 229 of the Civil Practice Act provides for substituted service on the Secretary of State "upon any liability incurred within this state." Defendant here is a Florida corporation, qualified in 1922 to do business in New York. Plaintiff after attempting to serve summons on defendant's appointed agent was informed that he had removed to Florida; thereupon the summons was served on the Secretary of State. The New York Supreme Court, Appellate Division, First Department, affirms the order vacating the service as ineffectual saying that it is unnecessary to resolve the apparent conflict between the state statutes since under the decisions of the United States Supreme Court the service cannot be sustained under either of them, the liability not having been incurred in New York, and as in a transitory case service is invalid if made on the Secretary of State, not as the true or duly designated agent but as the alternative or substituted agent. Powell vs. Home Seekers' Realty Co., 228 N. Y., N. Y. Supp. 131. Sidney S. Bobbe, of New York City, for appellant. Metcalf, Reilly & Allen, of New York City (Orlando P. Metcalf, of New York City, of counsel), for respondent.

On service of process. In a three to two decision the New York Supreme Court, Appellate Division, First Department, holds invalid the service of summons on two Mexican oil corporations, all the stock of which is owned by a Virginia transport corporation which also owns all the stock of a Delaware marketing corporation. The stock of the Mexican corporations is pledged to The New York Trust Company, as trustee, under a deed securing an issue of bonds. In 1922 receivers in equity were appointed in New York for the two American companies. The president of the controlling American corporation directed from its New York office the affairs of the Mexican companies, "giving instructions which were at all times obeyed." The American corporations act under so-called agency agreements which give them the right to sell the Mexican oil and account therefor to the Mexican corporations, the latter reserving the right to fix terms and prices. After the appointment of the receivers affairs were conducted as before. Separate accounts were kept; the Mexican corporate organizations have at all times been preserved, and it is conceded that neither of the Mexican companies has or ever had any bank account, officer, director, or employee within the state. Service was on the president of the American controlling company. The court says that the foreign corporations are not amenable to service here unless they are here in fact and finds that they were not. "It is not enough that business of the corporations is carried on in New York. That business must be carried on by the foreign corporation itself. * * * The corporate entity of the defendants was at all times scrupulously maintained. The parties in interest had a right to set up and preserve the corporate differentiation. They did so, and there

is no principle of law or public policy which deprives them of their right to resist service within this jurisdiction when the corporations never acquired a presence within the state." Companie Mexicana Refinadora Island, S. A. v. Compania Metropolitana De Oleoductus, S. A., et al., 228 N. Y. Supp. 36. Chadbourne, Hunt, Jaeckel & Brown (William M. Chadbourne, of counsel, and Charles A. Boston, Frederic G. Bastian, and Clinton DeWitt Van Siclen, on the brief), all of New York City, for appellant Compania Metropolitana, etc. Hornblower, Miller & Garrison, of New York City, for appellant Compania Petrolera Capuchinas, S. A. Hunt, Hill & Betts (Leavitt J. Hunt, of counsel, Leo C. Fennelly, on the brief), all of New York City, for respondent.

Pennsylvania.

What constitutes "doing business" for purposes of the corporate loan tax. Section 4 of the Act of June 30, 1885, P. L. 193, requires the treasurer of every private corporation, domestic and foreign "doing business in this commonwealth" to assess and deduct from the interest which it pays on its indebtedness owned by residents of Pennsylvania a tax of 4 mills (Act of June 8, 1921, P. L. 229) and to pay the same into the state treasury. The defendant here is a Massachusetts corporation. It maintains offices in Boston, New York and Philadelphia; it has three mills, two in Delaware and one in Maryland. All of the officers live in Philadelphia; the meetings of the Board are held at the Philadelphia office and the minutes thereof are kept there; the treasurer performs his duties there; all the books of account and of sales are kept there; approximately eighteen persons work there; the officers and employees connected with the Philadelphia office are paid there; purchases of raw materials and supplies for the mills are contracted for there. The Court of Common Pleas of Dauphin County finds that the company was doing business in Pennsylvania within the meaning of the corporate loan tax statute saying in the course of the opinion that the facts that the company had practically no tangible property in the state and that the company may be engaged in interstate commerce have no bearing. Commonwealth v. Jessup & Moore Paper Co., 14 Dep. Rep. 1928, 557.

Taxation

Massachusetts.

Corporate excess tax on foreign corporations; inclusion in corporate excess of value of stock of Maine subsidiaries operating in Massachusetts upheld. The petitioner here, a Maine corporation, conducts its business of buying hides and skins and selling leather through tanneries, wholly in Massachusetts. It does no tanning. It owns the entire capital stock of two Maine tanning companies whose tanneries are located in Massachusetts, all tanning in one case and most in the other being done for the petitioner. The questioned tax is an annual excise "equal to five dollars per thousand upon the value of the corporate excess employed by [the corporation] within the commonwealth." The petitioner con-

tended that the inclusion of those stocks as part of the assets employed by it in Massachusetts for the purpose of measuring its taxable corporate excess is in effect the imposition of a tax upon the stocks themselves; that those stocks, as distinguished from the assets of the subsidiary corporations, had no situs in Massachusetts and were not within its jurisdiction; and that the statute so applied, is, therefore, beyond the power of the state and violates the due process clause of the Fourteenth Amendment. The United States Supreme Court, in National Leather Co. vs. Massachusetts, decided May 28, 1928, in sustaining the tax, finds that there is no direct tax on the shares, and that "the petitioner through its ownership of the capital stock of the two subsidiary corporations and the control which it thereby exercised over them, did, in a very real and practical sense, employ these stocks as an instrumentality in carrying on its business in Massachusetts—to the extent, at least, that the controlling activities and property of the subsidiary corporations were within the state."

New York.

License fee on foreign corporations having stock without par value held unconstitutional. The tax or fee involved is that imposed by §181, Article 9, of the New York Tax Law. The foreign corporation here involved duly procured its authorization to do business in New York under the terms of Sections 15 and 16 of the General Corporation Law having complied with all the provisions thereof. The tax provided by the tax law is imposed on every foreign corporation doing business in the state for the privilege of so doing, at the rate of six cents on each non-par value share of its capital stock employed by it within New York during the first year of carrying on its business within the state. In the instant case it was "not disputed that all the outstanding (250,000) shares were employed in New York." Having qualified a foreign corporation has access to the state courts during the thirteen months after beginning business in New York but is denied that right thereafter unless it has paid the tax and received a receipt therefor. The tax in the case of shares of stock having a par value is at the rate of ⅛ of 1% on the basis of the capital stock employed in the state as above stated. It was contended that the statute under which a tax of $15,000 was imposed by the State is invalid as denying to the corporation as a "person within its jurisdiction the equal protection of the laws." The State claims the right to require payment of the tax as a step precedent to granting quasi citizenship to the foreign corporation and so that the foreign corporation's right to demand "equal protection of the laws" does not exist the tax being made in legal contemplation against a person not "within its jurisdiction." The United States District Court, District of Delaware holds that the payment of the tax is not a condition precedent to the right to do business in New York; that the tax is imposed on a foreign corporation already admitted; that any state statute applicable to such a corporation must conform to the equal protection clause of the Fourteenth Amendment (Hanover Ins. Co. v. Harding, 272 U. S. 494, 510-517); and that "it is obvious that the part of the statute pertaining

to non-par stock does not so conform" (Air-Way Corporation vs. Day, 266 U. S. 71). In the matter of Thermiodyne Radio Corporation, Bankrupt. Decided May 18, 1928. Not yet officially reported.

New York.

Unqualified foreign corporation if "doing business" in New York is subject to the license fee imposed for the privilege. It is so held by the Supreme Court, Appellate Division, Third Department. The court says: "While the statute (Section 181 of the Tax Law) is somewhat obscure in its language, we are of the opinion it was the intent of the Legislature that a foreign corporation should be liable for a tax regardless of whether the corporation obtained the certificate provided in section 110 of the Stock Corporation Law." People v. Tropical Fruit Corporation, 228 N. Y. Supp. 189.

Pennsylvania.

Gross receipts tax on transportation companies held to be unconstitutional. The tax is eight mills on the dollar on gross receipts of domestic and foreign corporations "received from passengers and freight traffic transported wholly within" Pennsylvania. No such tax is imposed in the case of individuals and partnerships engaged in the transportation business. The tax is not "in lieu" of other imposts. Plaintiff-in-error is a New Jersey corporation, authorized to do business in Pennsylvania, carrying on a general taxicab business in Philadelphia. The United States Supreme Court in Quaker City Cab Co. vs. Pennsylvania, decided on May 28, 1928, holds, Justices Brandeis, Holmes, and Stone dissenting, that the statute imposing the tax violates the equal protection clause of the Fourteenth Amendment and so that the tax cannot be sustained, the court saying, inter alia: "The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. * * * In no view can it be held to have more than an arbitrary basis."

Cancellation of building and loan association stock standing in name of decedent. In cases where a building and loan association permits the withdrawal or cancellation of its stock standing in the name of a decedent, without a formal transfer thereof to it, the executor or administrator of a deceased stockholder need not obtain the Auditor General's consent to such withdrawal prior to the payment of the transfer inheritance tax to which said estate may be subject. The foregoing caption and syllabus appears in the Departmental Reports of Pennsylvania, 14 Dep. Rep. 1928, 579 [17 P. C. R. 1928, 74], as the heading to the reported opinion of Deputy Attorney General Philip S. Moyer, to Hon. Edward Martin, Auditor General, dated May 2, 1928.

Some Important Matters for July, August, September and October

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual licenses on certain occupations due on or before November 1.—Domestic and Foreign Corporations.

ARKANSAS—Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Corporation Franchise Tax due on first Monday in July.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax due on or before September 1.—Domestic and Foreign Corporations.

Annual Report due on or before August 15.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1 but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due between June 1 and July 31.—Domestic Corporations.

IOWA—Annual Report due between the first day of July and the first day of August.—Domestic and Foreign Corporations.

Additional statement due at the time of making the Annual Report in July.—Foreign Corporations.

MAINE—Annual Franchise Tax due on or before September 1.—Domestic Corporations.

MARYLAND—Franchise Tax due on or before September 1.—Domestic Business Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July or August. —Domestic and Foreign Corporations.

MISSISSIPPI—Annual Report to factory inspector due during July.—Domestic and Foreign Corporations.

Income Tax Return due on or before June 15.—Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee during July.—Foreign Corporations.

Annual Statement due on or before September 15.—Foreign Corporations.

NEW JERSEY—Franchise Tax due on or before first Monday in August.—Domestic Corporations.

NEW MEXICO—Annual Franchise Tax Report due on or before September 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before November 30.—Domestic and Foreign Corporations.

NORTH CAROLINA—Annual Franchise Tax due on or before October 1.—Domestic and Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

OKLAHOMA—Annual License Tax Report due on or before July 31.—Domestic and Foreign Corporations.

Annual Capital Stock Affidavit due between July 1 and August 1. —Foreign Corporations.

OREGON—Annual License Fee due within 30 days after July 15.—Domestic Corporations.

License Fee due between July 1 and August 15.—Foreign Corporations.

UNITED STATES—Third Installment of Income Tax due on or before September 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Some Legal Questions in Relation to Investment Trusts. A discussion of their validity, taxability, distinction between "trust" and "association," with citations of leading court decisions and decisions of the U. S. Board of Tax Appeals, and their treatment under the New York State Income, Inheritance and Stock Transfer Taxes.

What Constitutes Doing Business. (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Six Points to Watch in Incorporation. A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.

Two Notable Certificates of Incorporation. Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.

Certificate of Incorporation of Pullman Incorporated. Pullman Incorporated was the first internationally known corporation to take advantage of the new features of the Delaware law as amended in 1927, and its charter will therefore be of great interest to lawyers.

Safeguarding Stock Transfers. Dealing with the many pitfalls in transferring stock on a corporation's books.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to January, 1928.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.

Analysis of Recent Amendments to Delaware Corporation Laws. Complete text of these important new features together with explanation of their effect.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

Corporations represented in a corporate capacity by The Corporation Trust Company, in Delaware or elsewhere, find that to have this company acting also as Transfer Agent or Registrar is highly efficient and satisfactory. It not only assures that friendly co-operation between Transfer Agent and Corporate Agent which is so essential to the company's corporate safety, but concentrates the responsibility for such co-operation in one organization. It means that the same institution responsible for compliance with the statutes regarding the keeping of duplicate stock records where required in the state of incorporation, is responsible for reporting all changes in those records promptly. Also the good understanding already established, through our corporate services, with the company's counsel assures a close co-operation between counsel and Transfer Agent that is always to the company's advantage.